## IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA ANDERSON/GREENWOOD DIVISION

Larry Pate, #6387826,	) Civil Action No.: 8:07-1741-JFA-BHH
Plaintiff,	) )
VS.	) REPORT AND RECOMMENDATION ) OF MAGISTRATE JUDGE
James Metts, Sheriff of Lexington County; and Robert M. Stevenson, III, Warden of Broad River Correctional Facility,	) ) ) ) )
Defendants.	) )

The plaintiff brought this action seeking relief pursuant to Title 42, United States Code, Section 1983. On October 26, 2007, defendant Robert M. Stevenson filed a motion for summary judgment. On October 29, 2007, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Despite this explanation, the plaintiff elected not to respond to the motion.

After being granted three extensions, defendant James Metts filed a motion for summary judgment on November 28, 2007. On November 29, 2007, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the plaintiff was again advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Despite this explanation, the plaintiff elected not to respond to the motion.

As the plaintiff is proceeding *pro* se, the court filed a second order on February 5, 2008, giving the plaintiff through February 28, 2008, to file his response to both motions for summary judgment. The plaintiff was specifically advised that if he failed to respond, this action would be dismissed for failure to prosecute. The plaintiff elected not to respond.

Based on the foregoing, it appears the plaintiff no longer wishes to pursue this

action. Accordingly, it is recommended that this action be dismissed for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.1982). *See Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989).

s/Bruce H. Hendricks United States Magistrate Judge

March 6, 2008

Greenville, South Carolina Carolina